

REMARKS

Applicant appreciates the Examiner's thorough review of the application.

Reconsideration and allowance of all claims as amended are requested.

Although Applicant disagrees with the rejections of record, solely in an effort to expedite prosecution Claim 22 has been amended to place it in independent form, Claim 21 has been canceled without prejudice and without disclaimer, and the remaining dependent claims have been amended to depend from Claim 22. Claims 22 and 28 have also been amended to remove "one or more," overcoming the 35 U.S.C. 112 rejections. No new matter has been added by the amendments.

Claims 1 - 20 and 30 - 55 have been withdrawn. Claim 21 has been canceled. Claims 22 - 29 are now pending in the application, including independent Claim 22 and independent and allowed Claim 28.

Regarding the Examiner's comments on Page 4 that "with reference to Fig 2 (inclusive of the embodiment selected), there is only one recess on one tray, not a set of recesses," kindly note that this does not give rise to a written description issue. Fig. 2 is a close-up view of one side of a stack of trays and a set of clips. It does not illustrate an entire tray. As such, it is entirely consistent with a claim requiring a set of recesses. Moreover, this language was present in the original claims. As such, the claims serve as their own written description. Furthermore, Figs. 8, 10, 18, 19, 15, 22, and 23 all show complete trays, which each have multiple recesses. The fact that the species of Figs. 1-7 were elected does not prevent the entire application from being used to provide a proper understanding of the claim language. For these reasons, and as a result of the amendment, the rejections under 35 U.S.C. 112 are improper, and should be withdrawn.

Claims 22 - 27 and 29 are patentable under 35 U.S.C. 102(b) and 103(a) over Li (5,727,681) and Kunimune et al. (4,892,189).

Applicant objects to the lack of examination of the dependent claims. The Examiner has not given an explanation as to why the dependent claims were rejected. MPEP 2141 states that: "Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C. 103. 35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed. Clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability."

If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. *In re Oetiker*, 25 USPQ2d 1443, 1447 (Fed. Cir. 1992) citing *In re Grabiak*, 226 USPQ 870, 873 (Fed. Cir. 1985).

In fact, the office action does not provide any basis for the rejection of each of the features in every dependent claim and therefore applicant is unable to determine Examiner's basis for the rejection of each of the claims to adequately rebut the rejections. Therefore, as dictated by Oetiker "without more applicant is entitled to grant of the patent."

In any case, "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Kunimune and Li

do not teach or suggest all the claim limitations of Claims 22 - 29.

For example, neither Kunimune nor Li teaches or suggests that the one or more sets of clips bend along a longitudinal axis for inserting into the one or more mounting recesses on the edges of the trays. With regard to Kunimune, the Examiner does not argue otherwise. With regard to Li, the Examiner states "The reduced neck portions/detents (just below ref 35) bend along a longitudinal axis to maintain the trays raised block/projections (ref 43) in the slot/hole (ref 34) of the clip until released." The structure described by the Examiner is completely different from what is claimed. In the present claims, the clip must bend longitudinally, not a neck portion or detent, and it bends for inserting into a mounting recess on the edge of a tray, which clearly is not done by Li.

For at least those reasons, Claim 21 is patentable over all references. The rejections under 35 U.S.C. 102(b) and 103(a) are improper and should be withdrawn. Claims 23 - 27 and 29 depend from independent and patentable Claim 22 and add further patentable features. Examples are given below.

Claim 23 adds that after the bent clips are inserted into the mounting recesses, pressure is applied to an exposed surface until the clips return to their initial configuration and for locking the clips into the mounting recesses. No reference teaches or suggests this feature. With regard to Kunimune, the Examiner does not argue otherwise. With regard to Li, the Examiner merely states in a conclusory fashion that this element is met, without giving any citation. Clearly this is not taught or suggested by Li, which does not require manipulation of the purported "clips" for attachment.

Claim 26 adds that the one or more clips have generally trapezoidal shapes with triangles removed from a longer side surface for bending the one or more clips along the longitudinal axis.

No reference teaches or suggests this feature. With regard to Kunimune, the Examiner does not argue otherwise. With regard to Li, the Examiner argues that the connectors of Li meet this requirement, however as explained these connectors are rectangles with holes in the center and not trapezoidal and do not bend along the longitudinal axis.

Claim 29 adds that the mounting recesses and clips have complementary dovetail shapes, and further comprising locking ribs projecting inward from ends of the mounting recesses on the individual trays and complementary grooves on ends of the one or more clips for receiving and holding the locking ribs. No reference teaches or suggests this feature. With regard to Kunimune, the Examiner does not argue otherwise. With regard to Li, the Examiner argues that element 43 of Li is a locking rib and element 34 is a groove. However, the claim requires that the ribs extend inwards from ends of the mounting recesses and that the grooves be on ends of the one or more clips. These limitations are not met by Li.

With regard to the complementary dovetail shapes, the Examiner argues that this limitation is "merely" a change in shape and therefore obvious, citing to In re Dailey.

MPEP §2144.04 states: "If the facts in the prior art legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court." MPEP §2144.04 further states "If the Applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rationale to support an obviousness rejection."

As discussed in MPEP §2144.04VI.C., In re Dailey involved claims to a disposable plastic nursing container that was the same as the prior art except for the particular configuration. No evidence was produced that the particular configuration of the claimed

container was significant, and therefore the court held that the configuration was a matter of choice which a person of ordinary skill in the art would have found obvious.

It is respectfully submitted that the facts of the In re Dailey case are not sufficiently similar to those in the instant application to support Examiner's use of the precedent as a source of supporting rationale for a determination of obviousness. The Application clearly shows that the complementary dovetail shapes are essential to the operation of the claimed invention, since they secure the clips to the trays. The entire method by which the invention functions depends on the particular shape and structure of the clips, which are the heart of the invention. Thus the shapes of the clips and recesses, unlike the facts of In re Dailey, do modify the operation of the device. Accordingly, the Examiner's reliance on the precedent as the sole rationale to support the obviousness determination is improper under MPEP §2144.04.

For at least these reasons, the rejection of Claims 22 - 27 and 29 under 35 U.S.C. 102(b) and 103(a) is improper and should be withdrawn.

CONCLUSION

Reconsideration and Allowance of all claims as amended are respectfully requested.

Respectfully,



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